

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Procedures for Commission Review of State)	
Opt-Out Requests from the FirstNet Radio)	PS Docket No. 16-269
Access Network)	
Implementing Public Safety Broadband)	
Provisions of the Middle Class Tax Relief and)	PS Docket No. 12-94
Job Creation Act of 2012)	
Implementing a Nationwide, Broadband,)	
Interoperable Public Safety Network in the 700)	PS Docket No. 06-229
MHz Band)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 MHz Bands)	

COMMENTS OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania (“Pennsylvania”) welcomes the opportunity to participate in this proceeding that will impact the future deployment of the National Public Safety Broadband Network (“NPSBN”) when that deployment involves a State opting-out and takes on the responsibilities for its own radio access network (“RAN”) deployment rather than having its RAN built by the First Responder Network Authority (“FirstNet”). Pennsylvania submits these comments and welcomes the opportunity to respond to the Federal Communications Commission’s (“FCC/Commission) Notice for Proposed Rulemaking (“Notice”).¹

¹ *Procedures for Commission Review of State Opt-Out Requests From the FirstNet Radio Access Network*, Proposed Rule, Fed. Reg. Vol. 81, No. 183, p. 64825 (Sept. 21, 2016)(“Notice”).

The Notice seeks comment on the FCC's proposed rules "for administering the Commission's role in the State-Opt-Out process from the FirstNet RAN as provided under section 6302 the Middle Class Tax Relief and Job Creation Act of 2012 ("Act").²

I. The Commission's Role in the State Opt-Out Process

We agree that pursuant to the Act, upon completion of the FirstNet request for proposal ("RFP") for construction, operation, maintenance, and improvement of the NPSBN, FirstNet must provide the Governor of each state a Plan to build-out the NPSBN within their State. Then, "[n]ot later than 90 days after the date on which the Governor of a State receives notice . . . the Governor shall choose whether to participate in the deployment of the nationwide, interoperable broadband network as proposed by [FirstNet,] or conduct its own deployment of a radio access network in such State."³

We also agree with the Commission's tentative conclusion "that states electing to opt-out of the NPSBN must file a notification with the Commission no later than 90 days after the date they receive electronic notice from FirstNet as provided in Section 6302(e)(2),"⁴ with a caveat that when FirstNet makes a change to a State Plan during the 90-day period, in addition to communicating that change to the state, FirstNet will also alert the FCC and NTIA, and the 90-day window will be restarted at FirstNet, the FCC, and NTIA.

Pennsylvania agrees with the FCC's proposal that when a state delivers an opt-out notice to the FCC, the state would also certify to the FCC that the state also notified FirstNet and NTIA of its opt-out decision. The official opt-out response should be securely tendered by the Governor or by the State Point of Contact ("SPOC") on behalf of the Governor via certified mail

² *Id.* Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012) (Act).

³ 47 U.S.C. §1442(e)(2).

⁴ *Id.*

or secured email. We also recommend that the Commission, FirstNet, and NTIA establish dedicated secure emails or preferably a single dedicated secure email to receive the opt-out notice from the State.

A. State Timetable to Develop and Complete its RFP

Under the Act, a Governor shall develop an RFP for the construction, maintenance, and operation of the RAN and shall complete that RFP within 180 days.⁵ We are struck by the lack of time a state has under the Act to complete an RFP. For these reasons, the Commission and the NTIA must provide their criteria, for approving or disapproving a state RAN plan, at least three months before the draft State plans are delivered by FirstNet, as suggested and depicted here in Exhibit A:

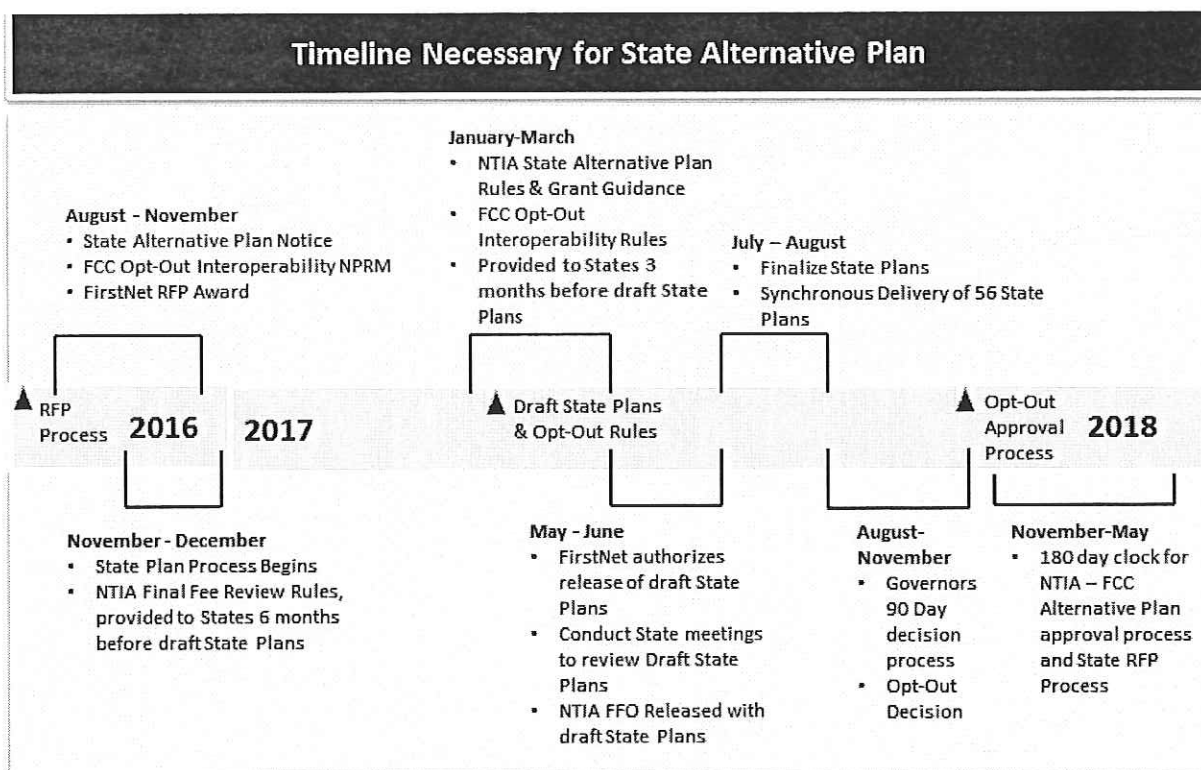


Exhibit A

⁵ *Id.* at (e)(3)(B).

We believe that the Act does not require that the State-RAN RFP be issued or awarded within 180 days. We agree with FirstNet that an RFP can be considered complete once a State “has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).”⁶ A fiscally-responsible state government would not issue an RFP without a system specification, alternative plan, submitted by the State and approved by the Federal government. We believe that the completion of the RFP should have three parts: (1) a written, State-approved RFP; (2) a draft State alternative plan included in the RFP; and (3) clear terms in the RFP that the contract is subject to the State alternative plan being finalized upon federal approval.

We agree that should a State fail to meet the statutory 180 day RFP completion period, it forfeits its right to further have its RFP considered by the Commission.

B. State Timetable to Submit its Alternative Plan to the Commission

The Act requires an opt-out State to submit to the Commission an alternative plan for the construction, maintenance, and operation of the RAN within the State.⁷ The Act does not specify when a State must deliver its alternative plan should it opt-out. We agree with the Commission’s proposal that “if a state notifies the Commission of its intention to opt-out of the NPSBN, the electing state will have 180 days from the date it provides such notification to submit its alternative plan to the Commission,”⁸ with the caveat that the 180-day period must be incremented one day for every day past the date of FirstNet’s delivery of the State Plan that the FCC has not yet made available to states the complete list of clear, detailed guidelines and rules

⁶ Notice at ¶51.

⁷ 47 U.S.C. §(e)(3)(B).

⁸ Notice at ¶52.

with which the FCC will judge State alternative plans. Without this, every opt-out state would be burdened with significant technical and financial risks that endanger the objectives of the Act.

II. A State May Submit an Alternative Plan to the Commission for the Construction, Maintenance, Operation, and Improvements of the RAN Within the State

Under section 1442 of the Act, “{T}he State shall submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission.”⁹ The plan must demonstrate that the State will meet the minimum technical interoperability requirements developed by the Public Safety Interoperability Board under section 1423¹⁰ and be interoperable with the FirstNet NPSBN. In the Act, the Commission is granted the authority to approve or disapprove the alternative plan.¹¹

Pennsylvania agrees that the Act requires the approval by the Commission of an opt-out state’s alternative plan. We, however, believe that the Commission has an obligation to establish and make public its approval criteria in a timely fashion, so that states may make an informed opt-out decision and have time to develop a sound plan. We believe the Commission should provide its approval criteria at least three months before the FirstNet draft state plans are simultaneously distributed across the country. (*See supra* Exhibit A for suggested timeline.) This will allow our Governor to make an informed decision, so that we can decide how to provide the best network possible for our first responders and the citizens they protect and serve.

If a state’s alternative plan is approved by the Commission, the state “may apply to the NTIA for a grant to construct” its own RAN.¹² We presume that “may apply” refers to financial grant requests and not to permission to build its own RAN.

⁹ 47 U.S.C. §1442(e).

¹⁰ 47 U.S.C. §1423.

¹¹ 47 U.S.C. §1442(e).

¹² 47 U.S.C. 1442(C)(iii)(I).

A. Contents of the State Alternative Plan

Pennsylvania agrees that the State alternative plan must “(1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in Sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability.”¹³

B. Commission Evaluation of the State Alternative Plan

We agree that the Commission should have a standardized organization scheme or format for alternative plans to ease their evaluation and that plans should include separate sections for each of the four RAN categories (construction, maintenance, operation, and improvements). We adamantly believe that State should be allowed to file amendments or provide supplemental information to their plan once it is filed with the FCC and prior to the FCC’s decision.

Commission staff should be required to discuss any plan deficiencies prior to the final ruling on the alternative plan and a State must have enough time to take corrective actions. If a plan is deemed sufficient by the Commission before a state awards a contract pursuant to its RFP, the Commission, not the NTIA, should condition approval on substantial compliance with the approved plan under the awarded contract.

C. The Need for Common Technical Network Policies

We believe that all components of the NPSBN, including the core network and the RAN, must be operated under common technical network policies. As such, we contend that the approval by the Commission of the interoperability capabilities of a State’s alternative plan satisfies the need for the common technical network policies. We believe there is no need for the NTIA to require a duplicative and unneeded demonstration for grant funding.

¹³ *Id.* at 1442(e)(3)(C)(i)(I) & (II).

If FirstNet's common technical network policies are deemed not to be duplicative, they must be transparent and delivered one month prior to the draft state plans providing States who desire to file an alternative plan the needed time to include FirstNet's technical network policies in their alternative plan. The FirstNet technical network policies must include the technical and operational requirements of the network and should be written in a manner that enables individual states to meet the requirements, and not be needlessly onerous.

We believe that the Commission must independently and impartially evaluate whether alternative plans comply with the interoperability-related requirements established by FirstNet, and that the Commission should not be empowered to impose network policies or interoperability requirements on FirstNet.

D. The Role of NTIA

In its recent Notice, the NTIA also seeks a required demonstration that the state's "RAN and other network attributes will be interoperable with the NPSBN on an "ongoing" basis."¹⁴ We contend that this is a duplicative requirement under the Act. Even the NTIA admits that "consistent with the interoperability demonstration a state must make to the FCC in its state alternative plan."¹⁵ This potential NTIA requirement is burdensome and unwarranted. Pennsylvania recommends that the NTIA streamline the process, instead of making it administratively burdensome and complicated for states.

III. The Commission's Review and Determination of the State Alternative Plan

The details of the State alternative plans should be confidential and only the fact that a State filed an alternative plan should be made public. Review and comment of the State

¹⁴ See Department of Commerce, NTIA, Docket No. 160706588-99-01, *State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network*, Fed. Reg. Vol. 81, No. 138, 46907 (July 19, 2016) (NTIA Notice).

¹⁵ *Id.*

alternative plan should be limited to only the Commission, pursuant to the Act. The Act did not contemplate a public review of the State alternative plans. The Act requires an independent review of the State plans by the FCC without the influence of other Federal Agencies or the general public.

The Commission should establish a “90 day shot clock” to provide certainty to the State and expedience to the process. We strongly encourage the FCC, NTIA, and FirstNet to set deadlines and manage to those deadlines in the same way that States are required to adhere to deadlines. The Commission should determine a timeline process for reviewing the alternative plan and it should be communicated to the States prior to the delivery of the draft State Plans. The FCC should notify the State that it is "on the clock" but should not notify the general public. Again, the public should only be made aware of the receipt of the plan and the results of the FCC review. In addition, the NTIA and FirstNet should not be involved in the FCC alternative state plan process.

A. The Statute Mandates a Two Prong Test

We agree that section 6302(e)(3)(C)(i) states that there is a two prong test that the Commission must adhere to in making a determination on a State’s alternative plan:

...submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission, and such plan shall demonstrate—

(I) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203; and
(II) Interoperability with the nationwide public safety broadband network.
In this respect, the statute provides a two-pronged standard by which the Commission must evaluate a state’s submission.¹⁶

We agree “that the Commission is barred from entertaining any amended or different alternative plan if it has issued a decision disapproving a state’s alternative plan.”¹⁷ In addition, the

¹⁶ 47 U.S.C. §1442(e)(3)(C)(i).

Commission should enter into a dialogue process with the State where it provides a list of plan deficiencies and gives States time to resolve all deficiencies prior to its decision. We believe that Congress intended for this process to be a reasonable, collaborative, and interactive that nurtures a State's ability to opt-out of the NPSBN, if it so chooses.

The alternative plan should be limited to the RAN, as specified under "section 6202(b)(2)(A) of the Act defines the RAN to consist of "all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum."¹⁸ In addition, we agree with the FirstNet definition that it includes "standard E-UTRAN elements (e.g., the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points."¹⁹ The definition of RAN does not include user equipment (UE), devices, and UE-related interoperability, nor does it include applications. These considerations are outside of the scope of the Commission's opt-out evaluation.

Pennsylvania agrees that "Congress defined the test to ensure that state RAN plans would only be approved if they are designed to interact with the FirstNet network in a manner that supports the Act's overarching goal of providing nationwide interoperability to first responders."²⁰ We have significant concerns "that any alternate plan submitted by a state that would require alteration or changes to the FirstNet network to accommodate the state's proposed RAN would not meet the interoperability requirement under the Act."²¹ We interpret the legislation as requiring the FCC to evaluate an alternative plan based on whether or not it will maintain interoperability with the NPSBN, as Congress intended. The Commission's

¹⁷ Notice at ¶56.

¹⁸ *Id.* at ¶64.

¹⁹ *Id.*

²⁰ *Id.* at ¶67.

²¹ *Id.*

interpretation broadens the evaluation criteria beyond the scope of what Congress intended. For example, if we elect to opt-out and issue an RFP and select a equipment vendor different from FirstNet and they lose network discounts in deploying the NPSBN, it could be concluded that the State has impacted FirstNet's plans and the Commission could thereby reject the State's alternative plan even though the state meets the technical and statutory interoperability threshold.

The Commission's review should solely address technical interoperability criteria relating to the RAN as defined in the Interoperability Board's Report. In addition, opt-out states should certify compliance with the interoperability-related elements of FirstNet's network plan and policies and provide additional documentation regarding specific elements in their alternative plans that could affect interoperability. States should not have to provide vendor information and/or a roadmap detailing the planned life-cycle of the state's proposed RAN, how the state RAN will provide for backward compatibility, and how equipment hardware/software/firmware will be evolved and phased in and out over time consistent with FirstNet's interoperability requirements, as FirstNet must provide these requirements in the draft State plan.

FirstNet must provide a roadmap detailing all of the aforementioned RAN requirements and all other information that the Commission might need to evaluate the merits of the state's alternative plans. Additional documentation regarding elements of a State's test plans in cases where the RFP has been completed but not issued or awarded will not be available. We believe that the Commission should provide conditional approval and that the state must provide their test plans following the award of their RFP.

B. State Certification and Commission Review and Decision of the Alternative Plan

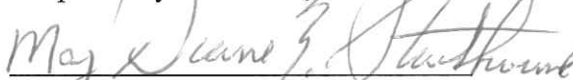
If the Commission opts to require applicants to certify their compliance, we strongly believe that the Governor or SPOC is more than sufficient to certify compliance. Congress intended for the FCC to conduct an independent and unbiased review of the alternative plan uninfluenced by industry, and/or other federal agencies or associations. The intent of Congress should be respected and there should be no 3rd party review.

The Commission should document its decision and proactively provide a schedule of review that contains the specific criteria that the alternative plan will be evaluated upon. The alternative plan should only be reviewed by the Commission and upon its final decision, the Commission will provide a detailed written list of deficiencies and recommended corrective actions to the State and provide the State with a timely opportunity cure. The FCC should only publicly release approval or disapproval of the alternative plan and no other information shall be released except to the State.

IV. Conclusion

For the reasons set forth herein, we urge Commission to interpret the Act consistent with our comments when considering state demonstrations of an opt-out State alternative plan.

Respectfully submitted,



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